

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

BRANDON CHANDLER,

Plaintiff,

v.

Case No. _____

EDDY COUNTY SHERIFF'S DEPARTMENT,
SHERIFF MARK CAGE, in his official capacity,
EDDY COUNTY SHERIFF'S 911 DISPATCH,
EDDY COUNTY BOARD OF COMMISSIONERS,
CHIEF OF CARLSBAD POLICE DEPARTMENT,
CHIEF SHANE SKINNER, in his official capacity,
AND MAYOR OF CARLSBAD, DALE JANWAY, in his official capacity,
LT. VICTOR MARTINEZ, in his individual capacity,
AGENT A. RIVERA, in his individual capacity,
AGENT CHRIS CORAN, in his individual capacity,
JOHN DOES 1-4 of Eddy County Sheriff,
DEPUTY T. SATTERFIELD of the EDDY COUNTY
SHERIFF'S OFFICE, John Does 5 – 9 of City of Carlsbad Police Department,
OFFICER JUDY BRAKEMAN of the CARLSBAD POLICE DEPARTMENT,
OFFICER ELIZABETH FERRALES of the
CARLSBAD POLICE DEPARTMENT,

Defendants.

NOTICE OF REMOVAL

COME NOW Defendants the Chief of Carlsbad Police Department, Chief Shane Skinner, in his official capacity, the Mayor of Carlsbad, Dale Janway, in his official capacity, Agent A. Rivera, in his individual capacity, Agent Chris Coran, in his individual capacity, Officer Judy Brakeman and Officer Elizabeth Ferrales ("the City Defendants"), by and through their attorneys of record, Hinkle Shanor LLP (Richard E. Olson and Chelsea R. Green), and hereby file this Notice of Removal. In support of removal, the City Defendants would show the Court as follows:

1. On October 16, 2019, Plaintiff filed his original *Complaint for Damages Arising from Assault, Battery, False Imprisonment, False Arrest, Malicious Prosecution, Abuse of*

Process, and Negligent Hiring and Supervision (“Complaint”) against Defendants, a copy of which is attached hereto as Exhibit 1, in the Fifth Judicial District Court in Eddy County, New Mexico, Case No. D-503-CV-2019-01631.

2. On January 24, 2020, Plaintiff filed his *First Amended Complaint for Damages Arising from Assault, Battery, False Imprisonment, False Arrest, Malicious Prosecution, Abuse of Process, and Negligent Hiring and Supervision* (“First Amended Complaint”), a copy of which is attached hereto as Exhibit 2.

3. Copies of all process, pleadings and/or orders served on Defendants in the state court proceeding are attached hereto as Exhibits 1 through 69.

4. On February 27, 2020, the County Defendants filed a *Motion for More Definite Statement*, which sought to clarify whether Plaintiff was making any federal claims. *See* Exhibit 4 attached hereto. After holding a hearing on the matter, the Court entered its *Order Granting County Defendant’s Motion for More Definite Statement* on August 19, 2020, a copy of which is attached hereto as Exhibit 35. The Court found that Plaintiff’s *First Amended Complaint* does not contain any federal claims. *Id.* The Court ordered that Plaintiff shall move the Court for leave to amend his Complaint no later than 120 days from August 4, 2020, or on or before December 2, 2020. *Id.*

5. On November 30, 2020, Plaintiff filed his *Motion for Leave of the Court to File Verified Amended Complaint*, a copy of which is attached as Exhibit 63.

6. The state district court entered its *Order Granting Plaintiff’s Motion for Leave of the Court to File Verified Amended Complaint* on December 11, 2020, *see* Exhibit 68 hereto, and Plaintiff filed his *Verified Amended Complaint for Assault, Battery, False Arrest, Negligent Hiring and Supervision, and Intentional Infliction of Emotional Distress, Malicious Prosecution, Fourth Amendment Constitutional Search and Seizure Violations all Arising from the Unlawful Use of*

Excessive Force (“Verified Amended Complaint”) on December 21, 2020. *See* Exhibit 69 attached hereto.

7. In the *Verified Amended Complaint*, Plaintiff added a federal cause of action for which the United States District Court has original jurisdiction. 28 U.S.C. §1331.

8. Specifically, in the *Verified Amended Complaint*, Plaintiff has asserted federal causes of action for unlawful search and seizure and for a violation of due process against Defendants alleged to have acted under color of state law, which arises under the United States Constitution and 42 U.S.C. §1983. In addition, Plaintiff has requested attorneys’ fees and punitive damages, which are not available under the New Mexico Tort Claims Act and can only arise under 42 U.S.C. § 1983 under the circumstances alleged in Plaintiff’s *Verified Amended Complaint*. Thus, this action is removable, pursuant to 28 U.S.C. §1441(a) and (c), which makes removable any civil action for which the district courts have original jurisdiction founded on a claim or right arising under the laws of the United States.

9. The removing Defendants received a copy of the filed *Verified Amended Complaint* on December 21, 2020. *See* Exhibit 69. Therefore, this Notice of Removal is timely filed, as it is within 30 days of Plaintiff’s service of a pleading upon a defendant which purports to assert relief under federal law, as set forth in Paragraph 6 above.

10. The time in which the removing Defendants are required to answer Plaintiff’s *Verified Amended Complaint* by the law of the State of New Mexico has not yet expired.

11. Venue is properly placed in the United State District Court for the District of New Mexico because it is the district court for the district within which the action is pending, in accordance with 28 U.S.C. §1446(a).

12. The remaining Defendants who have been served and have appeared consent to removal.

13. Written notice of the filing of this Notice of Removal will be given to Plaintiff pursuant to 28 U.S.C. §1446(d) promptly after the filing of this Notice of Removal.

14. Pursuant to 28 U.S.C. §1446(d), a true and correct copy of the Notice of Removal will be filed with the Clerk of the District Court of Eddy County, State of New Mexico, promptly after filing in this Court.

WHEREFORE, the Defendants pray that this State Court action be removed from the Fifth Judicial District Court, County of Eddy, New Mexico, to this Court for trial and determination as provided by law.

Respectfully Submitted:

HINKLE SHANOR LLP



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CERTIFICATE OF SERVICE

I hereby certify that on this December 28, 2020, I caused the foregoing NOTICE along with this Certificate of Service, to be served and filed electronically through the CM/ECF File & Serve electronic filing system, which caused all parties or counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.


HINKLE SHANOR LLP